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March 30, 2012

BY E-MAIL AND US MAIL

Mr. Leonard B. Grossman
US EPA
Region 2
290 Broadway
Mail Code 21st FL
New York, NY 10007-1866

Re: AES Puerto Rico L.P.

Dear Mr. Grossman:

I write on behalf of AES Puerto Rico L.P. (AES-PR) to follow up on your recent visit to the AES-PR Guayama facility.

As you know, EPA representatives visited the AGREMAX™ handling and manufactured product storage area at the AES-PR Guayama facility on March 13, 2012. During the visit, your staff collected 21 grab-samples of AES-PR's manufactured aggregate, commercially known as AGREMAX™, and advised that EPA would be testing the samples using a method that is part of the Leaching Environmental Assessment Framework (LEAF) under development at Vanderbilt University.

As AES-PR has articulated to EPA previously, we believe that AGREMAX™ – which Puerto Rico EQB does not regulate as a solid waste - is not toxic or hazardous. Testing has repeatedly shown that it can be safely manufactured and sold by AES-PR and used by our customers in road beds and other applications. AES-PR has documented this in its own testing using approved EPA test methods. This has also been demonstrated in independent tests, including testing done for Puerto Rico EQB and the Puerto Rico House of Representatives, as well as research by academics and private consultants at the University of Puerto Rico at Mayaguez, Texas A&M, and the Polytechnic University of Puerto Rico.

Nonetheless, we understand that EPA has collected these samples in conjunction with an EPA Region 2 evaluation of AGREMAX™.[1] AES-PR is committed to working collaboratively with EPA in this effort, as the long-term management of coal combustion products is essential to ensuring that AES-PR can meet its contractual obligations to provide approximately 12-15% of the island's electricity load to the Puerto Rico Electric Power Authority.

In order to assist EPA in evaluating AGREMAX™, AES-PR needs the benefit of the technical data that EPA has collected and is collecting pursuant to its review. Unfortunately, we are advised that at the site meeting, it was not clear whether EPA would share the results of its testing with AES-PR. We presume that was an oversight. When EPA collects samples at a facility under RCRA, the statute requires EPA to provide the results of "any analysis" to the facility. 42 U.S.C. § 6927(a) (If EPA "obtains any samples" before leaving a facility and if "any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge."). Accordingly:

1. We would respectfully request that EPA provide the results of the testing conducted on the samples collected at the AES-PR Guayama facility on March 13, 2012. This includes the data and related documentation, such as any quality assurance and quality control documentation, so we may fully understand the nature of the data collected. As available, we would ask that EPA provide the data in both an electronic format (such as Excel or other data file) as well as a hard copy.

2. We also request that EPA provide the plans we presume EPA has prepared for this sampling and testing program, including the Sampling and Analysis Plan, the Quality Assurance Project Plan, and/or similar planning documents.[2] The LEAF methods are not standard EPA methods, and there are differences among the various methods. As such, to interpret the data EPA gathers evaluating AGREMAX™ and facilitate a shared dialogue regarding those data, it is important for us to understand what LEAF methods EPA is using and how EPA is applying them. To the extent not included in the Plans, we would also request that EPA provide the following technical information concerning EPA's analysis of the AGREMAX™ samples using the LEAF methods:

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[1] *See* Letters from J. Enck to P. Nieves Miranda (Feb. 13, 2012) and (Nov. 7, 2011).

[2] Just as with the sampling results, RCRA provides that "any records, reports or information... obtained from any person," in connection with this effort "shall be available to the public," 42 U.S.C. § 6927(b)(1), unless there is a legitimate claim of confidentiality.

- LEAF includes four as-yet-to-be finalized test methods: 1313, 1314, 1315 and 1316.[3] Which of these tests is EPA running on the AES samples?
- If Method 1313 is to be conducted, what pH range will be used in the test?
- If Methods 1314 and 1316 are to be conducted, what liquid-to-solid ratios does EPA intend to evaluate?
- If Method 1314 is to be conducted, what liquid-to-surface area ratio will be used?
- We understand that there are four government labs, four academic labs, and three commercial labs currently under for LEAF testing. Which laboratory does EPA plan to use for their testing?
- What inorganics will be analyzed in the leachates resulting from each test method?

3. Further, we request that EPA explain why it has chosen to use the LEAF test methods here, as opposed to the long-validated analytical methods for evaluating the recently obtained samples of AGREMAX™. As you know, the LEAF test method is still experimental, has not been validated, and has not been approved by EPA under EPA's official SW-846 guidance, "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods." As such, a facility could not use a LEAF test to demonstrate that a material is not characteristically hazardous to comply with RCRA requirements.[4] In contrast, AES-PR has already made available to the Region our validated data for AGREMAX™ obtained by using EPA's own approved methods (*e.g.*, the TCLP). Moreover, these EPA-approved methods are of course readily available to Region 2 to analyze the samples that it recently obtained.

4. AES-PR is concerned that the LEAF test methods may not be representative of actual conditions where AGREMAX™ is used. For example, LEAF method 1313 appears to test using solutions that range from a pH of 2 to a pH of 13.[5] Those ranges do not equate to the pH in the actual uses of AGREMAX™ or in the local environment, which I

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[3] http://vanderbilt.edu/leaching/downloads/test-methods/

[4] http://www.epa.gov/waste/hazard/testmethods/sw846/index.htm (SW-846 functions as a guidance document setting forth acceptable methods to use in responding to RCRA-related sampling and analysis requirements.)

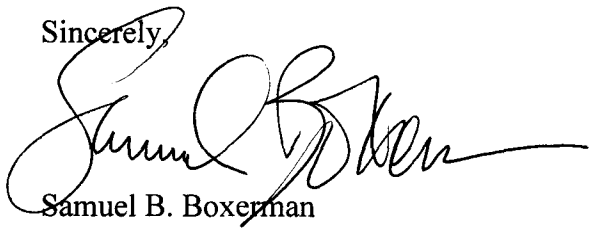
[5] http://vanderbilt.edu/leaching/wordpress/wp-content/uploads/Method-1313-r3-01-03-12.pdf ("1.8 The maximum mass of constituent released over the range of method pH conditions ($2 \leq pH \leq 13$) may be considered an estimate of the maximum mass of the constituent leachable under field leaching conditions ...")

understand can vary across the island. Accordingly, we request that EPA please explain why this testing would adequately evaluate the leaching of AGREMAX™ in its actual management scenarios.

5. In addition, in the letters EPA sent to the Puerto Rico EQB, EPA reported that it has visited locations where it observed AGREMAX™.[6] If EPA has concerns about any of these sites, we would appreciate the opportunity to understand the bases of EPA's concerns. As such, we would request that EPA identify for us the locations that it visited and believes it observed AGREMAX™, as well as to provide the results of any testing EPA has done of those locations. As above, we would again appreciate if EPA would share the data and related documentation with us electronically, if available in that format.

To reiterate, AES-PR would be pleased to work collaboratively with EPA to evaluate the agency's LEAF testing results. We look forward to receiving the requested information from EPA and moving forward in a cooperative manner.

Sincerely,



Samuel B. Boxerman

cc: Eric Schaaf
Ron Rodrique

[6] *See* note 1, *supra*.